IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

Crl.MC.No. 2918 of 2006()

CRRP.26/2005 of SESSIONS COURT, TRIVANDRUM
MC.107/2003 of SUB DIVISIONAL MAGISTRATE, TRIVANDRUM

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PETITIONERS: COUNTER PETITIONERS:

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1. N. SANKARAN NAIR,
   SASI VIHAR, T.C.76/1283, PULIKKODE LANE,
   BHAGATH SINGH ROAD,KADAKAMPALLY,THIRUVANANTHAPURAM

2. B. PADMAKUMARI, W/O.N.SANKARAN NAIR,
   SASI VIHAR, T.C.76/1283, PULIKKODE LANE,
   BHAGATH SINGH ROAD,KADAKAMPALLY,THIRUVANANTHAPURAM

BY ADV. SRI.R.BINDU (SASTHAMANGALAM)
SRI.PRASANTH M.P

RESPONDENTS: COUNTER PETITIONER & STATE:

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1. T. VIJAYAMMA,
   T.C.76/1290, PULIKKODE LANE,BHAGATH SINGH ROAD,
   KADAKAMPALLY, THIRUVANANTHAPURAM.

2. SUB DIVISIONAL MAGISTRATE,
   THIRUVANANTHAPURAM.

3. STATE OF KERALA,
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

R2 & 3 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 02/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2918 of 2006

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Dated this the 2nd day of August, 2007

O R D E R

The petitioners assail the concurrent direction issued to the petitioners to cut and remove a coconut tree allegedly leaning over the house of a neighbour. The Sub Divisional Magistrate initiated proceedings under Section 133 Cr.P.C. A conditional order was passed. Opportunity to show cause was given. Site inspection was conducted, both by the Tahsildar and by the Executive Magistrate. It was found that the tree is in such a position that nuts, leaves etc. from the tree were likely to fall on the roof of the petitioners/complainants. The Executive Magistrate made the conditional order absolute and directed cutting and removal of the tree.

2. The petitioners approached the learned Sessions Judge in revisioin. The leaning Sessions Judge re-appreciated all the relevant inputs and confirmed that there was no reason to interfere with the order passed by the Executive Magistrate by invoking the revisional jurisdiction. A second revision is not legally permissible and that explains why the petitioners have gained entry into this Court through the door of Section 482 Cr.P.C.

3. What is the grievance? The learned counsel for the petitioners submits that there has been no proper consideration of the question under Section 133(1)(d) Cr.P.C. as to whether the tree is likely to fall and thereby cause any danger to the occupants of the house. It is by now trite that the tree as such need not fall and if portions of the tree like nuts, leaves, fruits etc. are likely to fall and thereby cause danger to persons living nearby or passing by, then the powers under Section 133 Cr.P.C. can justifiably be invoked. Annex.II report of the Tahsildar was available before the Executive Magistrate. The Executive Magistrate also had inspected the property, it is conceded. I am of the opinion that mind has been applied by both the courts below to the question as to whether the tree, including nuts, leaves etc. is likely to fall on the roof of the house of the neighbour and thereby cause danger to the neighbour.

4. I must alertly be conscious of the nature, quality and contours of jurisdiction of this Court under Section 482 Cr.P.C. The jurisdiction which is sought to be invoked and exercised is not appellate or revisional jurisdiction. Does justice fail? Is there miscarriage of justice? Is there abuse of process of the court? These are the crucial considerations while exercising the jurisdiction under Section 482 Cr.P.C. Even if there is an

erroneous finding of fact or law, unless it leads to miscarriage of justice, this court must resist to invoke the jurisdiction under Section 482 Cr.P.C. So reckoned, after going through the orders of the Sub Divisional Magistrate and the revisional court and after perusing Annex.II site inspection report, I am certainly not persuaded to hold that this is a fit case where such jurisdiction can or ought to be invoked.

5. This Crl.M.C. is accordingly dismissed.

(R. BASANT)
Judge

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